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Security Council Committee established pursuant to resolution 1540 (2004)

Note verbale dated 17 September 2012 from the Permanent Mission of the Republic of the Congo to the United Nations addressed to the Chair of the Committee

The Permanent Mission of the Republic of the Congo to the United Nations presents its compliments to the Office of the Chair of the Security Council Committee established pursuant to resolution 1540 (2004), adopted on 28 April 2004, and has the honour to transmit herewith the report of the Government of the Republic of the Congo on the implementation of the aforementioned resolution (see annex).

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Annex to the note verbale dated 17 September 2012 from the Permanent Mission of the Republic of the Congo to the United Nations addressed to the Chair of the Committee

First report of the Republic of the Congo on the implementation of Security Council resolution 1540 (2004)

Preamble

The illicit proliferation of weapons of mass destruction constitutes a serious threat to international peace and security. Therefore, the future of the Earth depends on the capacity of all members of the international community to work together to develop effective policy frameworks capable of preventing all forms of threat, whatever the source.

Specifically, States must take stronger measures to prevent and dissuade all non-State actors from manufacturing, acquiring, possessing, developing, transporting, transferring or using weapons of mass destruction for terrorist purposes.

On 28 April 2004, in order to achieve this worthy goal, the United Nations Security Council unanimously adopted resolution 1540 (2004), which is the essential tool available to the international community in combating the proliferation of weapons of mass destruction, including nuclear, chemical, biological and bacteriological weapons.

In application of the principle of general and complete disarmament, the Republic of the Congo is a party to numerous international, regional and subregional instruments. At the national level, its commitment is shown by its adoption of several instruments for combating weapons of mass destruction.

This report has been prepared and submitted to the Security Council Committee established pursuant to resolution 1540 (2004) ("the 1540 Committee") out of respect for the international commitments made by the Government of the Republic of the Congo. It includes the following sections:

- Overview of the Congo
- International instruments to which the Congo is a party
- Policy commitments of the Congo
- Legal framework
- Control measures
- Partnerships with respect to weapons of mass destruction
- Problems encountered in the implementation of resolution 1540 (2004)
- Suggestions for the 1540 Committee.

I. Overview of the Congo

The Republic of the Congo gained independence on 15 August 1960. It covers an area of 342,000 square kilometres and has a population of nearly 4 million.

The Congo is a transit country with a deep-water seaport, a railroad and a waterway, the Congo River (with a flow second only to that of the Amazon), which is navigable year round. Its soil and subsoil are rich with extensive natural resources that promise a brighter future for the country.

Based on these strengths, the Congo has undertaken an ambitious programme of socioeconomic modernization and industrialization with a view to becoming an emerging economy by 2025.

Under the Constitution of 20 January 2002, the political system is democratic and based on separation of the executive, legislative and judicial powers.

In this way, the Congo maintains good relations with its neighbours and contributes tirelessly to the peaceful settlement of disputes in Africa.

The Congo attaches great importance to the maintenance of international peace and security and does its utmost to respect its commitments in that regard.

II. International instruments

2.1 At the international level

The Congo is a party to the following conventions:

- Treaty on the Non-Proliferation of Nuclear Weapons, adopted in Washington on 1 July 1968, to which the Congo became a party on 23 October 1978
- Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof, adopted in London, Moscow and Washington on 11 February 1971, to which the Congo became a party on 23 October 1978
- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, adopted in London and Moscow on 10 April 1972, to which the Congo became a party on 23 October 1978
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, adopted in Geneva on 3 September 1992, which the Congo ratified on 29 May 2007.

2.2 At the regional level

The Congo is a party to the following conventions:

- Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted in Bamako on 30 January 1991, which the Congo ratified on 25 June 1997

– Organization of African Unity Convention on the Prevention and Combating of Terrorism, signed on 14 July 1999 and ratified on 8 September 2006.

The Congo is also a signatory to a number of conventions adopted at the international and regional levels, including, inter alia:

– Comprehensive Nuclear-Test-Ban Treaty, adopted in New York on 10 September 1996 and signed in February 1997

– African Nuclear-Weapon-Free Zone Treaty (Treaty of Pelindaba), adopted in Addis Ababa (Ethiopia) in July 1995 and signed on 27 January 1997.

In addition, the Congo is a party to several counter-terrorism conventions, including:

– Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), adopted in Tokyo on 14 September 1963 and ratified on 13 November 1978

– Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention), adopted on 16 December 1970, to which the Congo became a party on 24 November 1989

– International Convention for the Suppression of the Financing of Terrorism, ratified on 20 April 2002.

2.3 At the subregional level

As a member State of the Central African Economic and Monetary Community (CAEMC), the Congo is a party to several international instruments, including:

– Agreement on Judicial Cooperation on Criminal Police Matters among Central African States, signed in Yaoundé on 29 April 1999

– Regulation No. 08/05-UEAC-057-CM-13 adopting the Convention on the fight against terrorism in Central Africa, signed in Libreville on 4 November 2004

– Regulation No. 14/99/CEMAC-036-CM-03 of 17 December 1997 adopting the CAEMC-Democratic Republic of the Congo Navigation Code

– Regulation No. 01/03-CEMAC-UMAC of 4 April 2003 on the prevention and suppression of money-laundering and financing of terrorism in Central Africa

– Regulation No. 02/02/CEMAC/UMAC/CM of 14 April 2002 on the organization and functioning of the Action Group against Money-Laundering in Central Africa (GABAC)

– Regulation COBAC R-2005/01 on money-laundering and financing-of-terrorism procedures to be followed by reporting institutions in Central Africa.

Pursuant to article 184 of the Constitution of the Republic of the Congo, an international convention may be invoked in the courts as soon as it is ratified and has a rank higher than that of domestic law. It may be invoked directly where necessary.

III. Policy commitments

The authorities of the Republic of the Congo have, on many occasions, made policy commitments to support the implementation of resolution 1540 (2004) and have condemned the proliferation of weapons of mass destruction and of their means of delivery by non-State actors.

One example of this support for the implementation of resolution 1540 (2004) is the statement made by the Minister of the Presidency for national defence at the conference of experts of States parties to the Comprehensive Nuclear-Test-Ban Treaty, held in Vienna in 2011.

Condemnation of the proliferation of weapons of mass destruction and of their means of delivery by non-State actors is ensured systematically through application of the enforcement measures established in the codes and regulations in force in the Republic of the Congo.

The Congo has also participated in seminars on reduction of the worldwide threat of radioactive sources, organized by the Global Threat Reduction Initiative (GTRI) and held in Morocco in June 2010, and on the security of orphan sources, also organized by GTRI and held in Mauritius in September 2010.

IV. Legal framework

In addition to the international instruments on the proliferation of weapons of mass destruction that it has signed or ratified, the Congo has a number of legal instruments that can be used to achieve the outcome sought by resolution 1540 (2004).

These instruments establish penalties for both perpetrators and their accomplices in the event of a violation.

In line with the spirit of resolution 1540 (2004), which requests States to take specific legislative measures, a draft law on implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) is in the process of adoption in the Congo.

These measures are constitutional, legislative and regulatory in nature.

4.1 Constitutional provisions

Desiring to enrich the world heritage, the Congo has enshrined in the preamble to the Constitution of 20 January 2002 its commitment to the values of peace, liberty, equality, justice, tolerance and morality and the virtues of dialogue as cardinal principles of the new political culture.

According to article 37 of the Constitution, "The transit, import, storage, concealment, dumping in the continental waters or maritime space under national jurisdiction or dispersal in the airspace of toxic, polluting, or radioactive wastes or any other dangerous substance, whether or not of foreign origin, shall constitute a crime punishable by law".

The "conditions for storing, handling, incinerating and discharging toxic, polluting or radioactive wastes originating in factories and other industrial or small-scale units in the national territory" are regulated by law pursuant to article 36 of the Constitution.

4.2 Legislation and regulations

Congolese legislation comprises a set of laws and regulations which govern the use and handling of hazardous substances that may be used in the manufacture of weapons of mass destruction. These provisions establish penalties for physical or moral persons who violate them.

Examples include, inter alia, the following laws and regulations:

- Law No. 25/62 of 21 May 1962, which regulates hazardous, unsanitary and poorly built structures
- Law No. 37/62 of 22 December 1962 on the special regime for explosives
- Law No. 003/91 of 23 April 1991 on environmental protection
- Law No. 24-94 of 23 August 1994, the Hydrocarbon Code
- Law No. 8/98 of 31 October 1998 on the definition and suppression of genocide, war crimes and crimes against humanity
- Law No. 4-2005 of 11 April 2005, the Mining Code
- Law No. 5/2009 of 22 September 2009 on the suppression of corruption
- The Congolese Penal Code, which criminalizes the illicit possession of all forms of weapons
- Decree No. 68/166 of 24 June 1968, which establishes the terms of implementation for Law No. 37/62
- Decree No. 2008-64 of 31 March 2008, which establishes the organizational, functioning and financing modalities for the National Financial Investigation Agency
- The Order of 30 April 1932, which regulates the import and trade in and possession of poisonous substances in French Equatorial Africa.

V. Control measures

1. The Congo has established a national committee responsible for follow-up to and coordination of implementation measures for resolution 1540 (2004). This committee comprises representatives of the relevant institutions and has a standing secretariat. Its primary mandate is to:

- Evaluate and coordinate all measures designed to implement resolution 1540 (2004)
- Prepare the Government's reports
- Draft the national action plan

– Regulate radioactive sources

– Ensure the proper handling of explosives for civilian use in quarries, mines, construction and agricultural engineering.

2. Legal activities that involve or may involve related materials are, in particular, those carried out by:

– Laboratories, including the radiology departments of hospitals and the Faculty of Science of Marien Ngouabi University

– Factories that use chemicals and handle derivatives

– Petroleum research and production companies

– Construction companies

– Mines, energy and hydraulics in general.

3. The laws and regulations that govern legal activities involving related materials are the Codes (Customs, Mining, Forestry, Water and Energy), laws, ordinances, decrees and orders.

4. The Congo's control lists that establish and identify related materials are those contained in the recommendation of the World Customs Organization (WCO) and in Schedules 1, 2 and 3 to the Chemical Weapons Convention.

5. Measures are taken at various levels in order to account for and, where necessary, secure related materials.

6. Control measures for related materials are contained in the various Codes.

7. With respect to training, the staff of the various departments concerned have attended workshops and conferences aimed at capacity-building in the areas of trafficking controls and addressing issues concerning activities with related materials, involving customs, defence, the police, special services and civil security.

8. Weapons of mass destruction is one of the subjects taught in military schools and training centres.

9. At the borders, customs officials have scanners to view the contents of containers. However, the infrastructure and equipment are inadequate.

10. The primary mechanisms for monitoring the import, export, transhipment and transit of related materials are the Customs Code and customs regulations.

11. Each of the relevant administrations has a focal point for the three areas (nuclear, biological and chemical). However, there is no coordination mechanism to encourage communication and the harmonization of working methods.

12. It should be stressed that a draft law on implementation of the Chemical Weapons Convention, which calls for, inter alia, the establishment of a national authority responsible for monitoring all bodies that work with chemicals, is in the process of adoption.

VI. International partnerships

With respect to international cooperation, the Congo:

1. Is in contact with the International Atomic Energy Agency (IAEA) through the International Projects Centre, which works on the safety of radioactive sources and the security of radioactive materials.

2. Maintains relations with the Financial Action Task Force (FATF) through the Ministry of Finance, including through the intermediary of GABAC, with which it has observer status. This means that this CAEMC body must adopt the FATF standards.

3. In nuclear matters, works in close partnership with the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) and has a National Data Centre.

4. Attended the workshop on the Centres of Excellence on Chemical, Biological, Radiological and Nuclear Risk Mitigation, organized by the European Commission and the United Nations Interregional Crime and Justice Research Institute (UNICRI) and held in Nairobi (Kenya) in February 2012.

5. Has established a National Financial Investigation Agency pursuant to article 25 of Regulation No. 01/03-CEMAC-UMAC of 4 April 2003 on the prevention and suppression of money-laundering and financing of terrorism in Central Africa.

6. Is implementing the WCO recommendation of March 2008 concerning sensitive products that could be used as related materials in the manufacture of chemical weapons.

7. Maintains cooperative relations with the Organisation for the Prohibition of Chemical Weapons (OPCW). Several related initiatives have been launched:

- An August 2010 mission to the Congo by an expert, who inspected the chemistry laboratories with a view to their modernization and to the establishment of water pollution analysis laboratories in Brazzaville and Pointe-Noire and of a laboratory for the analysis of imported and/or transit chemicals at the port of Pointe-Noire.
- Awareness-raising workshops on chemical weapons for parliamentarians and public- and private-sector authorities, held in Brazzaville and Pointe-Noire in November 2011.
- Legal assistance with the preparation of draft legislation on implementation of the Chemical Weapons Convention.

The Congo has also been proposed by other African countries as host for the Eleventh Session of the Conference of States Parties to the Chemical Weapons Convention.

8. The organization and functioning of GABAC, governed by Regulation No. 02/02/CEMAC/UMAC/CM of 14 April 2002.

9. The regional workshop on the development of national data centres, held in the Congo on 14 and 15 October 2010, which resulted in the establishment of the National Data Centre in the Congo.

10. Participation in the African outreach seminar on the Nuclear Security Summit and the Global Initiative to Combat Nuclear Terrorism (GICNT), held in Rabat (Morocco) on 21 and 22 November 2011.

VII. Problems

The problems encountered by the Republic of the Congo in the implementation of resolution 1540 (2004) include:

1. Inadequate and insufficient infrastructures.
2. Limited dissemination of the conventions on weapons of mass destruction.
3. Lack of specific oversight mechanisms for each of the legal instruments on weapons of mass destruction.
4. Lack of a national monitoring and coordination mechanism for efforts to monitor and combat weapons of mass destruction.
5. Insufficient, outdated and inadequate existing equipment.
6. Shortage of human resources trained in combating weapons of mass destruction.

VIII. Suggestions

Article 7 of resolution 1540 (2004) invites States in a position to do so to offer assistance to other States in areas such as experience and technical and/or regulatory matters.

In light of the foregoing, the Republic of the Congo requests the assistance of the 1540 Committee in the following areas:

1. Establishment of a national follow-up and coordination mechanism for monitoring and combating weapons of mass destruction.
2. Holding of awareness-raising campaigns concerning the conventions on weapons of mass destruction through workshops and seminars, particularly in the country's cities and border towns.
3. Support for facilities construction.
4. Acquisition of appropriate monitoring equipment and laboratories.
5. Establishment of a legal and institutional framework for the implementation of resolution 1540 (2004).
6. Capacity-building for various stakeholders in the implementation of resolution 1540 (2004).

Nevertheless, the Government of the Congo is doing its utmost with a view to the progressive implementation of resolution 1540 (2004).